

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TERRY KERR, *et al.*,

Plaintiffs,

v.

ALDRIDGE/PITE LLP, *et al.*,

Defendants.

Case No. 3:21-cv-00147-MMD-CLB

ORDER

**I. SUMMARY**

*Pro se* Plaintiffs Terry Kerr and Dennis Kerr bring numerous claims generally alleging wrongful foreclosure and related misconduct regarding the property located at 2140 Belmont Avenue in Idaho Falls, Idaho (the “Property”) against Defendants Aldridge/Pite LLP, Kathryn Moorner, and New Rez c/o PHH Mortgage Services. (ECF Nos. 1, 11 (mentioning the address of the Property in exhibits).) Before the Court are: (1) Moorner and New Rez c/o PHH Mortgage Services (collectively, “PHH Defendants”)’s motion to dismiss all of the claims asserted against them (ECF No. 6);<sup>1</sup> and (2) Plaintiffs’ motion for summary judgment (ECF No. 11).<sup>2</sup> PHH Defendants also filed a request for judicial notice along with their motion to dismiss. (ECF No. 7.) As further explained below, the Court will grant the motion to dismiss and deny the motion for summary judgment as moot because Plaintiffs’ case is barred by the doctrine of claim preclusion. But first, the Court will also mostly grant PHH Defendants’ request for judicial notice.

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<sup>1</sup>Plaintiffs did not file a response to this motion. PHH Defendants did not file a reply.

<sup>2</sup>PHH Defendants filed a response to this motion. (ECF No. 12.) Plaintiffs did not file a reply.

## II. REQUEST FOR JUDICIAL NOTICE

The Court first addresses PHH Defendants' request for judicial notice because properly noticeable information attached to it helps fill in some of the substantial gaps in the limited factual allegations included in the Complaint. PHH Defendants primarily ask the Court to take judicial notice of documents filed in federal and state court in Idaho, including decisions by the District of Idaho and the Ninth Circuit Court of Appeals. (ECF Nos. 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-10, 7-11.) Plaintiffs have not opposed. The Court takes judicial notice of these documents filed in or by Idaho state courts, the District of Idaho, and the Ninth Circuit. *See, e.g., Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012).

PHH Defendants also request the Court take judicial notice of the Deed of Trust for the Property. (ECF No. 7-1.) Plaintiffs have not opposed. The Court will also take judicial notice of the publicly recorded Deed of Trust. *See Harris*, 682 F.3d at 1132 ("We may take judicial notice of undisputed matters of public record[.]") (citation omitted).

PHH Defendants finally ask the Court take judicial notice of two letters purportedly sent to Plaintiffs regarding the Property (ECF Nos. 7-8, 7-9) and a copy of an online records search for the name Dennis Kerr (ECF No. 7-12). The Court declines to take judicial notice of these three documents. As to the letters (ECF Nos. 7-8, 7-9), these do not appear to be recorded or otherwise public documents. As to the search results (ECF No. 7-12), while they appear to come from Bonneville County, Idaho's website, they are summaries of recorded documents and not the publicly recorded documents themselves. Thus, it is not clear to the Court that either the search result document or the letters are public records not subject to reasonable dispute. Despite the fact that Plaintiffs have not opposed the Court taking judicial notice of them, the Court declines to do so.

## III. BACKGROUND

Plaintiffs generally allege that they did a loan modification on an unspecified property, made three required payments, "and then the loan was permanent." (ECF No. 1 at 3.) Then someone from India allegedly added an extra balloon payment of \$160,000

1 to the loan that Plaintiffs never agreed to, so Plaintiffs never signed the modification  
2 agreement. (*Id.*) Plaintiffs then allege that they filed a complaint with the Consumer  
3 Financial Protection Bureau (“CFPB”), but “the Defendants” lied to the CFPB. (*Id.*)  
4 Plaintiffs then allege that they attempted to settle a dispute with the “lawyer handling the  
5 case Moorer” and “Aldridge,” but apparently these settlement discussions were  
6 unsuccessful. (*Id.* at 3-4.) Plaintiffs then allege, apparently following the unsuccessful  
7 settlement negotiations, that “PHH Mortgage” sent them a new loan offer. (*Id.* at 4.) From  
8 there, Plaintiffs allege that the CFPB told Plaintiffs to sue ‘them,’ and mention a more than  
9 one-billion-dollar lawsuit. (*Id.*)

10 Plaintiffs proceed to list a series of alleged legal violations (*id.* at 4-5), and then list  
11 a series of claims for relief under the heading “First Claim for Relief.” (*Id.* at 5.) The claims  
12 are for breach of contract, unjust enrichment, breach of covenant, racial animus,  
13 violations of the Truth in Lending Act, violations of the Service Members Civil Relief Act,  
14 fraud and deceptive practices, and violations of Plaintiffs’ due process and equal  
15 protection rights. (*Id.* at 5-7.)

16 Plaintiffs never filed a response to PHH Defendants’ motion to dismiss but did later  
17 file a motion captioned as a motion for summary judgment. (ECF No. 11.) Plaintiffs’ motion  
18 for summary judgment provides some more information pertinent to their allegations.  
19 Specifically, it includes that the loan number of the mortgage that is presumably the focus  
20 of this case is 7145477613. (*Id.* at 2-3.) Plaintiffs also attached some exhibits to their  
21 motion for summary judgment. The first exhibit is the first page of a letter that lists the  
22 account number 7145477613 near the address 2140 Belmont Ave. Idaho Falls ID 83404-  
23 6450. (*Id.* at 11.) Plaintiffs’ Exhibit C similarly lists the same account number and property  
24 address. (*Id.* at 15.) So does Plaintiffs’ Exhibit D. (*Id.* at 17.) Plaintiffs’ Exhibit H does as  
25 well. (*Id.* at 26.) This allows the Court to conclude that Plaintiffs’ lawsuit concerns the  
26 Property.

27 Further, and as noted above, the Court takes judicial notice of certain documents  
28 filed by PHH Defendants establishing that this is Plaintiffs’ fourth lawsuit about the

1 Property alleging wrongful foreclosure and related claims. (ECF Nos. 7-2, 7-3, 7-4, 7-5,  
2 7-6, 7-7, 7-10, 7-11.)

3 Plaintiff Terry Kerr filed a lawsuit regarding the Property in Idaho state court in  
4 2011 (the “First Case”). (ECF No. 7-2 at 2.) The complaint in the First Case alleged that  
5 a loan modification Terry Kerr entered into on the Property was altered from what Terry  
6 Kerr agreed to. (*Id.* at 8.) The First Case was removed to federal court, and District Judge  
7 Edward L. Lodge of the District of Idaho granted summary judgment to the defendant  
8 American Home Mortgage Servicing, Inc., and dismissed Terry Kerr’s operative complaint  
9 with prejudice. (ECF No. 7-3.) Judge Lodge specifically found that Terry Kerr’s allegations  
10 that the defendant altered the loan agreement he entered into were not supported by the  
11 record. (*Id.* at 5.) Terry Kerr appealed, and the Ninth Circuit affirmed the district court’s  
12 decision. (ECF No. 7-4.) The Ninth Circuit specifically found that “Kerr failed to raise a  
13 genuine dispute of material fact supporting his contention that defendant breached its  
14 obligations to Kerr.” (*Id.* at 3.)

15 In 2018, Plaintiffs filed another case regarding the Property against Ocwen Loan  
16 Servicing LLC and two law firms in the District of Idaho (the “Second Case”). (ECF No. 7-  
17 5.) District Judge David C. Nye of the District of Idaho dismissed Plaintiffs’ complaint in  
18 the Second Case with prejudice primarily because Plaintiffs’ “factual allegations are  
19 conclusory and lack the necessary specifics that might give Defendants notice of the  
20 factual basis of the claims asserted against them[,]” and he had already given Plaintiffs’  
21 an opportunity to amend. (ECF No. 7-6 at 6.) Plaintiffs appealed this decision, but the  
22 Ninth Circuit affirmed, noting in pertinent part that the district court properly dismissed the  
23 Second Case because Plaintiffs “failed to allege facts sufficient to state any plausible  
24 claim for relief.” (ECF No. 7-7 at 3.)

25 In 2020, Plaintiff Dennis Kerr filed a complaint in Idaho state court against PHH  
26 Mortgage Services and some doe defendants regarding the Property (the “Third Case”).  
27 (ECF No. 7-10 at 4.) In the complaint in the Third Case, Dennis Kerr alleged that Dennis  
28 Kerr received a notice of intent to foreclose on the Property from PHH Mortgage Services

1 that also gave Dennis Kerr the ability to apply for a modification. (*Id.* at 5.) Dennis Kerr  
 2 applied for a modification, was told that Dennis Kerr qualified for a modification, but then  
 3 someone from India changed the terms of what Dennis Kerr thought Dennis Kerr agreed  
 4 to and added a \$160,000 balloon payment. (*Id.*) Dennis Kerr notes this is not what Dennis  
 5 Kerr agreed to. (*Id.*) Dennis Kerr goes on to allege that this is a hate crime, fraud, an  
 6 unfair trade practice, tortious interference with a modification contract, a violation of the  
 7 Bank Holding Act, a violation of the Truth in Lending Act, and a violation of the Racketeer  
 8 Influenced and Corrupt Organizations Act. (*Id.* at 7-10.)

9 District Judge Joel E. Tingey of the Seventh Judicial District of the State of Idaho,  
 10 in and for the County of Bonneville, granted PHH Mortgage Services summary judgment  
 11 in the Third Case. (ECF No. 7-11.) Judge Tingey found the undisputed facts showed the  
 12 mortgage on the Property has been in default for several years. (*Id.* at 2.) He continued,  
 13 “[w]hile Kerr qualified for the modification he ultimately determined not to sign the  
 14 permanent modification agreement, largely it seems because of the balloon payment that  
 15 would ultimately be required.” (*Id.* at 3.) Judge Tingey ultimately found that PHH Mortgage  
 16 Services took no wrongful action toward Kerr and the evidence did not support his claims.  
 17 (*Id.* at 4.) “Furthermore, the record does not include any evidence supporting the claims  
 18 asserted by Kerr.” (*Id.* at 5.) Judge Tingey accordingly granted summary judgment to PHH  
 19 Mortgage Services in the Third Case. (*Id.*) In the same order, Judge Tingey also denied  
 20 Dennis Kerr’s request to add Terry Kerr as a plaintiff to the Third Case. (*Id.*)

21 After Judge Tingey granted PHH Mortgage Services’ summary judgment motion,  
 22 judgment was entered dismissing the case with prejudice and closing it. See Case  
 23 Information, CV10-20-2517 | Dennis Kerr Plaintiff, vs. Phh Mortgage Services, Does 1-  
 24 10 Defendant (last visited November 15, 2021),  
 25 <https://mycourts.idaho.gov/odysseyportal/Home/WorkspaceMode?p=0#DispositionEvents>  
 26 [ts](#) (by first clicking ‘smart search,’ then entering in case number  
 27 CV10-20-2517 to the search bar, completing the Captcha, and clicking search, then  
 28 clicking on the hyperlinked case number that appears, and then clicking ‘disposition

1 events'). The Court takes judicial notice of the fact that the Third Case ended with a final  
2 judgment in PHH Mortgage Services' favor *sua sponte* based on the state court docket  
3 of that case, accessible on a state government website as noted above. *See Harris*, 682  
4 F.3d at 1132 ("We may take judicial notice of undisputed matters of public record[.]").

5 As to Aldridge/Pite LLP, Plaintiffs filed a proof of service stating that Sean  
6 O'Callaghan served its representative by dropping a summons and the Complaint in a  
7 drop box per COVID rules on April 30, 2021. (ECF No. 10.) Aldridge/Pite LLP has not yet  
8 appeared and did not participate in any of the pending briefing.

#### 9 **IV. LEGAL STANDARD**

10 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
11 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide  
12 "a short and plain statement of the claim showing that the pleader is entitled to relief."  
13 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While  
14 Rule 8 does not require detailed factual allegations, it demands more than "labels and  
15 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*  
16 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "Factual allegations  
17 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to  
18 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a  
19 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550  
20 U.S. at 570).

21 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
22 apply when considering motions to dismiss. First, a district court must accept as true all  
23 well-pleaded factual allegations in the complaint; however, legal conclusions are not  
24 entitled to the assumption of truth. *See id.* at 678. Mere recitals of the elements of a cause  
25 of action, supported only by conclusory statements, do not suffice. *See id.* Second, a  
26 district court must consider whether the factual allegations in the complaint allege a  
27 plausible claim for relief. *See id.* at 679. A claim is facially plausible when the plaintiff's  
28 complaint alleges facts that allow a court to draw a reasonable inference that the

1 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does  
 2 not permit the Court to infer more than the mere possibility of misconduct, the complaint  
 3 has “alleged—but it has not show[n]—that the pleader is entitled to relief.” *Id.* at 679  
 4 (alteration in original) (internal quotation marks and citation omitted). That is insufficient.  
 5 When the claims in a complaint have not crossed the line from conceivable to plausible,  
 6 the complaint must be dismissed. See *Twombly*, 550 U.S. at 570.

## 7 **V. DISCUSSION**

8 PHH Defendants raise several arguments in their motion to dismiss, but the Court  
 9 will only address their claim preclusion argument<sup>3</sup> because the Court finds it dispositive.  
 10 (ECF No. 6.)

11 To start, however, the Court notes Local Rule LR 7-2(d), which provides, “[t]he  
 12 failure of an opposing party to file points and authorities in response to any motion, except  
 13 a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent  
 14 to the granting of the motion.” *Id.* Plaintiffs did not file a response to PHH Defendants’  
 15 motion to dismiss. This is one reason why the Court is granting the motion to dismiss.

16 The other reason is that this case is precluded as duplicative of at least the Third  
 17 Case.<sup>4</sup> “Claim preclusion is a broad doctrine that bars bringing claims that were previously  
 18 litigated as well as some claims that were never before adjudicated.” *Clements v. Airport*  
 19 *Auth. of Washoe County*, 69 F.3d 321, 327 (9th Cir. 1995). “Res judicata [claim  
 20 preclusion] bars all grounds for recovery which could have been asserted, whether they  
 21 were or not, in a prior suit between the same parties in the same cause of action.” *Clark*  
 22 *v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1319 (9th Cir. 1992) (citation omitted). Under  
 23 “the Full Faith and Credit Act, federal courts must give state judicial proceedings ‘the

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 25 <sup>3</sup>This argument is properly raised in PHH Defendants’ motion to dismiss. See, e.g.,  
 26 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741 (9th Cir. 2006) (affirming the  
 27 district court’s finding on motions to dismiss for failure to state a claim that the plaintiffs’  
 claims had been extinguished by a prior judgment on either issue or claim preclusion  
 grounds).

28 <sup>4</sup>It is arguably also redundant of the First and Second cases, but the Court only  
 explicitly addresses the Third Case as it is the only case necessary for the Court’s  
 analysis.

1 same full faith and credit ... as they have by law or usage in the courts of [the] State ...  
2 from which they are taken.” *Robi v. Five Platters, Inc.*, 838 F.2d 318, 322 (9th Cir. 1988)  
3 (quoting 28 U.S.C. § 1738) (other citations omitted). The “Act requires federal courts to  
4 apply the *res judicata* rules of a particular state to judgments issued by courts of that  
5 state.” *Id.*

6 In Idaho, there are three elements that must be shown to assert claim preclusion:  
7 “(1) the original action ended in final judgment on the merits, (2) the present claim involves  
8 the same parties as the original action, and (3) the present claim arises out of the same  
9 transaction or series of transactions as the original action.” *Monitor Fin., L.C. v. Wildlife*  
10 *Ridge Ests., LLC*, 433 P.3d 183, 188 (Idaho 2019) (citation omitted). “When the three  
11 elements are established, claim preclusion bars ‘every matter offered and received to  
12 sustain or defeat the claim *but also as to every matter which might and should have been*  
13 *litigated* in the first suit.” *Id.* (emphasis in original, citation omitted).

14 PHH Defendants have shown that all three claim preclusion requirements are met  
15 between the Third Case and this case. First, and as described above in Section III, the  
16 Third Case ended with a final judgment in PHH Mortgage Services’ favor. (ECF No. 7-  
17 11.)

18 As to the second factor, PHH Mortgage Services is one of the PHH Defendants  
19 who filed the motion to dismiss in this case. However, there are two other Defendants in  
20 this case: Kathryn Moorner, represented by the same counsel as PHH Mortgage Services,  
21 and Aldridge/Pite LLP, who has not yet appeared in this case. And in the Third Case,  
22 Plaintiff also asserted claims against Doe Defendants 1-10. (ECF No. 7-10 at 4.) In  
23 addition, while Dennis Kerr was the only plaintiff in the Third Case, Judge Tingey also  
24 denied Dennis Kerr’s request to add Terry Kerr as a plaintiff to the Third Case in his order  
25 granting summary judgment PHH Mortgage Services’ favor. (ECF No. 7-11 at 5.) Thus,  
26 while the parties are not exactly the same between the Third Case and this case, there is  
27 substantial overlap.

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1           However, the Court nonetheless finds that the second claim preclusion factor also  
2 weighs in favor of finding this case barred. The fact that Terry Kerr requested to intervene  
3 in the Third Case, but his request was denied, shows that Terry Kerr was involved in the  
4 Third Case to some degree. Judge Tingey also mentioned that Terry Kerr had been  
5 declared a vexatious litigant and was therefore precluded from being a plaintiff in that  
6 case, which further suggests that Terry Kerr was involved in the Third Case because it  
7 offers an explanation as to why Terry Kerr was not initially listed as a plaintiff. (*Id.*) Further,  
8 there is no dispute that PHH Mortgage Services is the same party in both cases. In  
9 addition, while Moorer and Aldrige/Pite LLP were not listed as defendants in the Third  
10 Case, the Third Case also listed Doe Defendants that could be lawyers associated with  
11 PHH Mortgage Services, which is what Moorer and Aldrige/Pite LLP appear to be based  
12 on the allegations in the Complaint in this case. (ECF No. 1.) The Court accordingly  
13 concludes that the parties between the Third Case and this case are sufficiently the same,  
14 or in privity with the parties in the Third Case, that this factor also weighs in favor of finding  
15 claim preclusion.

16           As to the third factor, the claims in this case arise “out of the same transaction or  
17 series of transactions as the original action.” *Monitor Fin., L.C., LLC*, 433 P.3d at 188.  
18 The Complaint in this case and the complaint in the Third Case both allege that PHH  
19 Mortgage Services agreed to a modification regarding the Property, but then a person  
20 from India added a \$160,000 balloon payment to what Plaintiffs thought they agreed to,  
21 so Plaintiffs rejected the modification. (ECF Nos. 1, 7-10, 7-11 (finding undisputed facts  
22 highlighting the consistency of the allegations between the two complaints).) While the  
23 Complaint is hard to follow, the unique details contained therein match the complaint in  
24 the Third Case and therefore lead the Court to conclude that both cases are about the  
25 same transaction.

26           Because all three of the claim preclusion factors favor finding this case precluded,  
27 the Court finds that claim preclusion bars Plaintiffs’ claims and will grant PHH Defendants’  
28 Motion to Dismiss. *See Smith v. Accredited Home Lenders, Inc.*, Case No. 2:16-cv-

1 00869-MMD-CWH, 2017 WL 3567518, at \*2-\*3 (D. Nev. Aug. 17, 2017) (finding that claim  
2 preclusion barred federal case duplicative of state case); *Robinson v. Nevada Sys. of*  
3 *Higher Educ.*, Case No. 3:15-cv-00169-MMD-VPC, 2016 WL 3869846, at \*5 (D. Nev. July  
4 15, 2016), *aff'd*, 692 F. App'x 377 (9th Cir. 2017) (same); *Hine v. Bank of Am., N.A.*, Case  
5 No. 2:12-cv-00220-MMD, 2012 WL 5418295, at \*2 (D. Nev. Nov. 2, 2012) (finding that  
6 the plaintiff's complaint repetitious of prior federal complaints was barred by the doctrine  
7 of claim preclusion).

8 However, Aldridge/Pite LLP did not join the motion to dismiss and has not yet  
9 appeared. (ECF No. 10.) The Court will nonetheless dismiss Aldridge/Pite LLP along with  
10 PHH Defendants because Aldridge/Pite LLP is similarly situated to PHH Defendants and  
11 Plaintiffs' claims against Aldridge/Pite LLP are integrally related to their claims against  
12 PHH Defendants. *See Silverton v. Dep't of the Treasury*, 644 F.2d 1341, 1345 (9th Cir.  
13 1981); *see also Abaghinin v. Amvac Chem. Corp.*, 545 F.3d 733, 742-743 (9th Cir. 2008);  
14 *Chavarria v. Wells Fargo Bank, N.A.*, Case No. CV1503403BROASX, 2015 WL 4768227,  
15 at \*5 n.4 (C.D. Cal. Aug. 11, 2015) (dismissing claims against defendants who did not file  
16 motions to dismiss *sua sponte* in a similar case to this one that the district court found  
17 barred by the doctrine of claim preclusion). That means that the Court will dismiss  
18 Plaintiffs' Complaint in its entirety.

19 The Court's dismissal of this case is with prejudice. The Court has discretion to  
20 grant leave to amend and should freely do so "when justice so requires." Fed. R. Civ. P.  
21 15(a); *see also Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).  
22 Nonetheless, the Court may deny leave to amend if it will cause: (1) undue delay; (2)  
23 undue prejudice to the opposing party; (3) the request is made in bad faith; (4) the party  
24 has repeatedly failed to cure deficiencies; or (5) the amendment would be futile. *See*  
25 *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Facts raised for  
26 the first time in a plaintiff's opposition papers should be considered by the Court in  
27 determining whether to grant leave to amend or to dismiss the complaint with or without  
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1 prejudice. See *Orion Tire Corp. v. Goodyear Tire & Rubber Co.*, 268 F.3d 1133, 1137-38  
2 (9th Cir. 2001).

3 The Court will not permit Plaintiffs to file an amended complaint because such  
4 amendment would be futile. As explained above, claim preclusion bars Plaintiffs' claims.  
5 And Plaintiffs had an opportunity to respond to PHH Defendants' claim preclusion  
6 arguments but did not—even were the Court to consider Plaintiffs' summary judgment  
7 motion a response to PHH Defendants' motion to dismiss. Plaintiffs' motion for summary  
8 judgment does not mention claim preclusion, nor does it include any facts that would allow  
9 the Court to determine that this case is based on a different transaction or occurrence  
10 than the Third Case. (ECF No. 11.) Thus, Plaintiffs have not filed anything suggesting  
11 that it would be anything other than futile to allow them to amend their claims.

12 The Court further denies Plaintiffs' motion for summary judgment (ECF No. 11) as  
13 moot in light of its decision to grant PHH Defendants' motion to dismiss and dismiss this  
14 case in its entirety.<sup>5</sup> While it is difficult to decipher, Plaintiffs' motion for summary judgment  
15 primarily accuses PHH Defendants of lying about a loan modification process. (*Id.*) It does  
16 not appear to raise any separate issues that would remain live considering the Court's  
17 finding above that Plaintiffs' claims are barred under the doctrine of claim preclusion.

## 18 **VI. CONCLUSION**

19 The Court notes that the parties made several arguments and cited to several  
20 cases not discussed above. The Court has reviewed these arguments and cases and  
21 determines that they do not warrant discussion as they do not affect the outcome of the  
22 motions before the Court.

23 It is therefore ordered that Defendants Kathryn Moorer and New Rez c/o PHH  
24 Mortgage Services' motion to dismiss (ECF No. 6) is granted.

25 It is further ordered that this case is dismissed, in its entirety, with prejudice.

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28 <sup>5</sup>As noted, Plaintiffs' motion for summary judgment is arguably best characterized  
as an untimely response to PHH Defendants' motion to dismiss that does not address  
PHH Defendants' claim preclusion argument.

1 It is further ordered that Plaintiffs Terry Kerr and Dennis Kerr's motion for summary  
2 judgment (ECF No. 11) is denied as moot.

3 The Clerk of Court is directed to enter judgment accordingly and close this case.

4 DATED THIS 16<sup>th</sup> Day of November 2021.

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8 MIRANDA M. DU  
9 CHIEF UNITED STATES DISTRICT JUDGE  
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